

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

KYM GRAY, #203 553

*

Plaintiff,

*

v.

*

2:06-CV-107-MEF
(WO)

PAUL WHALEY, *et al.*,

*

Defendants.

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ORDER ON MOTION

Pending before the court is Plaintiff's February 22, 2006 Motion for Extension of Time to comply with the court's February 8, 2006 order directing payment of an initial partial filing fee. (Doc. No. 4.) In support of his motion Plaintiff asserts that he does not have sufficient funds in his inmate account to comply with the court's February 8 order.

The court has considered Plaintiff's pending motion and concludes that it should be construed as a request that he be allowed to proceed in this action without prepayment of the initial partial filing fee until such funds became available to him. Upon consideration of the motion, the court concludes that the motion shall be granted. Plaintiff is advised, however, that this court must, under the provisions of 28 U.S.C. § 1915(b)(1), "assess and, when funds exist, collect" the \$250.00 filing fee from monies available to Plaintiff, when the amount in Plaintiff's account exceeds \$10.00. The court may not waive or exempt Plaintiff from

compliance with the statutory provisions regarding payment of filing fees.

Accordingly, it is ORDERED that Plaintiff's February 22, 2006 pleading, construed as Motion to Proceed Without Payment of the Court-Ordered Initial Partial Filing Fee Until Funds Become Available (Doc. No. 4), be and is hereby GRANTED.

Done this 24th day of February 2006.

/s/ Vanzetta Penn McPherson
VANZETTA PENN MCPHERSON
UNITED STATES MAGISTRATE JUDGE